



The opinion in support of the decision being entered today
was **not** written for publication and
is **not** binding precedent of the Board.

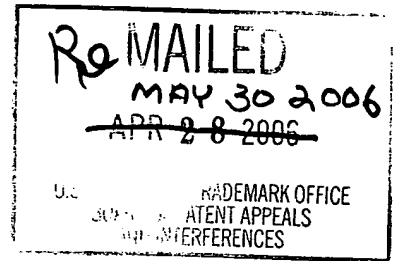
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WOLFGANG THIEL

Appeal No. 2006-0086
Application No. 09/527,138

HEARD April 4, 2006



Before FRANKFORT, LEVY and NAPPI, Administrative **Patent Judges**.

NAPPI, **Administrative Patent Judge**.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 of the final rejection of claims 1 through 7 and 9, all of the claims remaining in the application. For the reasons stated *infra* we will not sustain the examiner's rejection of claims 1 through 7 and 9.

THE INVENTION

The invention relates to a postage meter machine which has postage stamp data and franking image data for several countries and carriers permanently programmed into the memory of the machine. A selection device is then used to configure the machine by selecting the appropriate franking imprint configuration for the particular country where the machine is used. See pages 4 through 6 of appellant's specification.

Claim 1 is representative of the invention and is reproduced below:

1. A method for entering contents of a franking imprint into a postage meter machine, said postage meter machine having an electronic, digitally operating printer and said contents being employed for printing said franking imprint with said printer, said method comprising the steps of:
 - storing a set of data in a non-volatile, non-removable memory of said postage meter machine by permanently programming said set of data at a manufacturing location, said data being selected from the group consisting of different country-specific data and different carrier-specific data;
 - installing a data communication interface in said postage meter machine; and
 - configuring said franking imprint of said postage meter machine prior to use at a use location remote from said manufacturing location for at least one of a selected carrier and a selected country, by communicating with said postage meter machine via said interface, to select at least one of said permanently programmed carrier-specific data and country-specific [data] from said non-removable memory data.

THE REFERENCE

The reference relied upon by the examiner is:

Vanpoucke

5,262,939

November 16, 1993

THE REJECTIONS AT ISSUE

Claims 1 through 7 and 9 stand rejected under 35 U.S.C. § 102 as being anticipated by Vanpoucke.¹ Throughout the opinion we make reference to the briefs and the answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejection advanced by the examiner and the evidence of anticipation relied upon by the examiner as support for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, appellant's arguments set forth in the briefs along with the examiner's rationale in support of the rejection and arguments in rebuttal set forth in the examiner's answer.

With full consideration being given to the subject matter on appeal, the examiner's rejection and the arguments of appellant and the examiner, for the reasons stated *infra* we will not sustain the examiner's rejection of claims 1 through 7 and 9 under 35 U.S.C. § 102.

¹ We note that the Final Office action also rejected claims 1 through 7 and 9 under 35 U.S.C. § 102 as being anticipated by Freytag and by Märkl et al. Appellant presented arguments directed to these rejections in the brief, however the examiner did not repeat the rejections in the Answer. Accordingly we consider the appeal of these rejections to be dismissed. Nonetheless, we have reviewed appellant's arguments and the art. Had the examiner maintained the appeal of these rejections we would reverse the rejections for the reasons asserted by the appellant in the brief.

Appellant states, on page 12 of the brief, that claims 1 and 9 recite a selection from among different sets of previously stored data used to configure the franking imprint. Appellant argues, on pages 12 and 13 of the brief, that though Vanpoucke has file memories, item 2, which contain characteristics specific to different countries, there is no teaching in Vanpoucke of when and how the data is entered into the memory. Appellant acknowledges, on page 3 of the reply brief, that the memory 2 of Vanpoucke must include data which set or define the format of the franking imprint of whatever country the postage meter will be used in. However, appellant argues there is no selection of the different carrier specific or country specific data. In response, on page 4 of the answer, the examiner states:

In response to Appellant's argument (in Brief's page 13, lines 1-2) that there is no disclosure in Vanpoucke as to when and how data are entered into the file memory 2, such data entry must take place at the location of the manufacturer because the user of the system does not enter those data into the memory either (the manufacturer must enter the data into the memory to enable the user to operate the system).

Further, on page 3 of the answer, the examiner identifies Vanpoucke's card, item 20, as meeting the claimed interface (chip card) and cites column 3 lines 2 through 5 and 65 through 68 of Vanpoucke as describing the claimed selecting of data from memory to configure the franking imprint.

We are not persuaded by the examiner's rationale. Claim 1 includes the limitations of "storing a set of data in a non-volatile, non-removable memory of

said postage meter machine by permanently programming said set of data at a manufacturing location, said data being selected from the group consisting of different country-specific data and different carrier-specific data,” providing a data communication interface and “communicating with said postage meter machine via said interface, to select at least one of said permanently programmed carrier-specific data and country-specific from said non-removable memory data.” Thus, claim 1 requires the memory to contain different country specific data or carrier specific data and that a selection of the data is performed to arrive at an appropriately configured franking image configuration. Claim 1 also recites that the data is stored in the memory at a manufacturing location. Claim 9 contains limitations which recite a permanently installed non-volatile memory containing different carrier-specific data and different country specific data a microprocessor connected to a chip card reader wherein the microprocessor receives data from a chip card to select at least one of the carrier specific data and country specific data and loads the data into a franking imprint memory.

While we agree with the examiner that Vanpoucke does not teach that the user enters the data, Vanpoucke is silent as to who enters the data into the memory. However, we do not find that Vanpoucke’s silence on this issue teaches, or inherently requires, the data to be entered at a manufacturing location. As appellant argues, on page 2 of the reply brief, there are other scenarios, which could explain how data is entered into the memory. Inherency

is not established by possibilities or probabilities. The examiner is required to show that the feature asserted to be inherent must exist. For this reason alone we will not sustain the examiner's rejection of claim 1 and claims 2 through 7, the claims dependent therefrom.

Additionally, we disagree with the examiner's assertion that Vanpoucke teaches selecting the data from memory to configure the franking imprint. It is not clear from Vanpoucke whether the memory contains different country specific data and different carrier specific data as asserted by the examiner. Further, even if it were assumed that memory 2 of Vanpoucke did contain the data, we do not find that card 20 selects from the data. Vanpoucke teaches that the card includes programs identifying tariff schedules and documents to be printed. The card also includes encryption tables used in conjunction with update disks. See column 4, lines 25 through 47. We do not consider the "documents to be printed" to be the franking imprint.² Further, even if the documents to be printed includes the franking imprint, Vanpoucke does not teach that memory 2 includes the document data which is then selected by the card 20, rather card 20 contains the document data. Thus, we do not find that Vanpoucke teaches selecting the country specific or carrier specific data stored in the memory as claimed in independent claims 1 and 9. Accordingly, we will

² Vanpoucke identifies that there are numerous printers for printing specific documents and separately identifies the postage meter for franking. See column 3, lines 45 through 53. These documents are also described as other than payment stickers. See column 1, lines 50 through 51, and column 2 lines 50 through 53.

not sustain the examiner's rejection of claims 1 through 7 and 9.

In summary we will not sustain the examiner's rejection of claims 1 through 7 and 9 under 35 U.S.C. § 102. The decision of the examiner is reversed.

REVERSED


CHARLES E. FRANKFORT
Administrative Patent Judge


STUART S. LEVY
Administrative Patent Judge


ROBERT E. NAPPI
Administrative Patent Judge

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REN/vsh

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